

NOT FOR PUBLICATION

DEC 10 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

PERRY ROBERT AVILA,

Plaintiff - Appellant,

v.

J. B. WILLIAMS; et al.,

Defendants - Appellees,

No. 05-17020

D.C. No. CV-03-01774-WHA

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted December 3, 2007^{**}

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Perry Robert Avila, a California state prisoner, appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action alleging prison officials violated his First Amendment rights by preventing him from receiving magazines and books containing nudity. We have jurisdiction under 28 U.S.C.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we vacate and remand, in light of intervening authority.

The district court dismissed the entire action after concluding Avila failed to exhaust some claims before filing. We vacate the order and remand for reconsideration in light of *Jones v. Bock*, — U.S. —, 127 S.Ct. 910, 923-26 (2007) (holding an inmate’s compliance with PLRA exhaustion requirement as to some, but not all, claims does not warrant dismissal of entire action).

We deny all pending motions.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.